

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES W. BARTON,)	
Petitioner,)	
v.)	C.A. No. 03-30271-NMG
)	
STEVEN J. O'BRIEN,)	
SUPERINTENDENT,)	
Respondent.)	

MEMORANDUM AND ORDER

On November 28, 2003, petitioner James W. Barton, now incarcerated at N.C.C.I. Gardner, submitted for filing two petitions under 28 U.S.C. § 2254 accompanied by an Application to Proceed Without Prepayment of Fees. For the reasons stated below, the Court directs the clerk (1) to docket the petitions, (2) to amend the case caption and (3) to serve the petitions.

DISCUSSION

Presently before the Court are two habeas petitions filed by petitioner on November 28, 2003. Both petitions arise out of petitioner's July 26, 2002 convictions. The first petition is dated October 25, 2003, and the second petition dated November 24, 2003.

Both petitions name as respondent the Commissioner of Correction. The proper respondent to a Section 2254 petition is the petitioner's custodian, which in this case is Steven J. O'Brien, the Superintendent of N.C.C.I. Gardner. See Rule 2(a) of Rules Governing Section 2254 Cases; 28 U.S.C. § 2243. The Clerk shall amend the case caption to reflect that Superintendent

O'Brien is the sole respondent in this action.

The Court will direct the Clerk to serve the petitions on
(1) Superintendent O'Brien and the Attorney General for the
Commonwealth of Massachusetts. See Rules Governing Section 2254
Cases in the United States District Courts, Rule 4 (service).

ORDER

ACCORDINGLY, for the reasons stated above, it is hereby
ORDERED

- (1) the Clerk shall (a) docket the petitions and (b) correct the case caption to list Steven J. O'Brien, Superintendent as the sole respondent;
- (2) the Clerk shall serve a copy of this Memorandum and Order and the petitions by mailing copies, certified mail, to Superintendent Steven J. O'Brien, N.C.C.I. Gardner, P.O. Box 466, Gardner, MA 01440; AND the Attorney General for the Commonwealth of Massachusetts, Attention: William J. Meade, Chief, Appellate Division, One Ashburton Place, 18th Fl., Boston, MA 02108-1598.
- (3) the Respondent shall, within 20 days of receipt of this Memorandum and Order, file an answer (or other proper responsive pleading) to the habeas petitions. This Court further requests the Respondent, as part of the return, to file such documents which reflect on the issue as to whether Petitioner exhausted available state remedies with respect to the matters raised by the Petitions.

SO ORDERED.

Dated at Worcester, Massachusetts, this 5th day of Dec. 2003.



NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE